

STATUTORY INSTRUMENT

S.I. No. 518 of 2006

European Communities (Eligibility for Protection) Regulations 2006

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S. I. No. 518 of 2006

European Communities (Eligibility for Protection) Regulations 2006

I, Michael McDowell, Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive 2004/83/EC¹ of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Eligibility for Protection) Regulations 2006.

(2) These Regulations shall come into operation on 10 October 2006.

Interpretation

2. (1) In these Regulations—

“1996 Act” means the Refugee Act 1996;

“1999 Act” means the Immigration Act 1999;

“actors of persecution or serious harm” include—

(a) a state,

(b) parties or organisations controlling a state or a substantial part of the territory of that state, or

(c) non-state actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm;

“application for protection” means an application—

(a) under section 8 of the 1996 Act from a person for a declaration as a refugee, or

(b) from a person, who is not a national of a Member State and who does not qualify as a refugee, to be recognised as a person eligible for subsidiary protection under these Regulations;

“application for subsidiary protection” shall be construed in accordance with Regulation 4;

“Council Directive” means Council Directive 2004/83/EC¹ of 29 April 2004;

“country of origin” means the country or countries of nationality or, for stateless persons, of former habitual residence;

“declaration” shall be construed in accordance with section 17 of the 1996 Act;

“Member State” means a Member State of the European Union;

“Minister” means the Minister for Justice, Equality and Law Reform;

“person eligible for subsidiary protection” means a person—

(a) who is not a national of a Member State,

(b) who does not qualify as a refugee,

¹ OJ L304/12 of 30 September 2004.

(c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of suffering serious harm as defined in these regulations,

(d) to whom regulation 13 of these regulations does not apply, and

(e) is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

“protection” (except in the definition of “protection against persecution or serious harm”) means protection as a refugee or as a person eligible for subsidiary protection in the State;

“protection against persecution or serious harm” shall be regarded as being generally provided where reasonable steps are taken by a state or parties or organisations, including international organisations, controlling a state or a substantial part of the territory of that state to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection;

“protection applicant” means a person who has made an application for protection in the State and whose application has not been—

(a) determined,

(b) withdrawn or deemed to be withdrawn, or

(c) transferred to another country;

“protection decision” has the meaning given to it by Regulation 3, and “protection decision-maker” shall be construed accordingly;

“refugee” has the meaning given to it by section 2 of the 1996 Act;

“serious harm” consists of—

(a) death penalty or execution,

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

(2) A word or expression that is used in these Regulations and is also used in the Council Directive shall have in these Regulations the same meaning as it has in the Council Directive unless the contrary intention appears.

3. (1) Subject to paragraph (2), these Regulations apply to the following decisions (in these Regulations referred to as “protection decisions”) made on or after the coming into operation of these Regulations:

(a) a recommendation under section 13(1) of the 1996 Act;

(b) an affirmation under paragraph (a) or a recommendation under paragraph (b) of section 16(2) of that Act;

(c) the notification of an intention to make a deportation order under section 3(3) of the 1999 Act in respect of a person to whom subsection (2)(f) of that section relates;

(d) a determination by the Minister under Regulation 4(4) or 4(5).

(2) Nothing in these Regulations shall be taken to extend or reduce the functions of the Refugee Applications Commissioner or the Refugee Appeals Tribunal (within the meaning of the 1996 Act) in determining whether a person is a refugee.

Application for subsidiary protection

4.(1) (a) A notification of a proposal under section 3(3) of the Act of 1999 shall include a statement that, where a person to whom section 3(2)(f) of that Act applies considers that he or she is a person eligible for subsidiary protection, he or she may, in addition to making representations under section 3(3)(b) of that Act, make an application for subsidiary protection to the Minister within the 15 day period referred to in the notification.

(b) An application for subsidiary protection shall be in the form in Schedule 1 or a form to the like effect.

(2) The Minister shall not be obliged to consider an application for subsidiary protection from a person other than a person to whom section 3(2)(f) of the 1999 Act applies or which is in a form other than that mentioned in paragraph (1)(b).

(3) In determining whether a person is eligible for subsidiary protection, the Minister—

(a) shall take into consideration, in addition to matters mentioned in Regulation 5, any particulars furnished by the applicant under paragraph (1)(b); and

(b) may take into consideration—

(i) the information or documentation taken into consideration in relation to the determination of the applicant's application for a declaration, and

(ii) such other information relevant to the application as is within the Minister's knowledge.

(4) Where the Minister determines that an applicant is a person eligible for subsidiary protection, the Minister shall grant him or her permission to remain in the State.

(5) Where the Minister determines that an applicant is not a person eligible for subsidiary protection, the Minister shall proceed to consider, having regard to the matters referred to in section 3(6) of the 1999 Act, whether a deportation order should be made in respect of the applicant.

(6) Nothing in these regulations shall affect the discretionary power of the Minister under section 3 of the 1999 Act.

Assessment of facts and circumstances

5. (1) The following matters shall be taken into account by a protection decision-maker for the purposes of making a protection decision:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the

applicant has been or could be exposed would amount to persecution or serious harm;

- (d) whether the protection applicant's activities since leaving his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for protection as a refugee or a person eligible for subsidiary protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he or she could assert citizenship.

(2) The fact that a protection applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection.

(3) Where aspects of the protection applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met—

- (a) the applicant has made a genuine effort to substantiate his or her application;
- (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given;
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and
- (e) the general credibility of the applicant has been established.

Protection needs arising sur place

6. (1) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the protection applicant left his or her country of origin.

(2) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the protection applicant since he or she left his or her country of origin, in particular where the protection decision-maker is satisfied that the activities relied upon constitute the expression and continuation of convictions or orientations held by the protection applicant in the country of origin.

Internal protection

7. (1) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm.

(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

Control of a state or a substantial part of its territory by an international organisation

8. For the purposes of assessing whether an international organisation controls a state or a substantial part of its territory and provides protection against persecution or serious harm, the protection decision-maker shall take into account any guidance which may be provided in relevant Council acts.

Acts of persecution

9. (1) Acts of persecution for the purposes of section 2 of the 1996 Act must:

- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in subparagraph (a).

(2) Acts of persecution as qualified in paragraph (1) can, *inter alia*, take the form of—

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in section 2(c) of the 1996 Act;
- (f) acts of a gender-specific or child-specific nature.

(3) There must be a connection between the reasons mentioned in Regulation 10 and the acts of persecution referred to in paragraph (1).

Reasons for persecution

10. (1) A protection decision-maker shall take the following into account when assessing the reasons for persecution—

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural,

ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where in particular—

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

and, depending on the circumstances in the country of origin, a particular social group may include a group based on a common characteristic of sexual orientation. Sexual orientation shall not include acts considered to be criminal in the State: gender related aspects may be taken into account, without by themselves alone creating a presumption for the applicability of this Regulation;

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the protection applicant.

(2) When assessing whether a protection applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by an actor of persecution.

Refusal to grant or renew or revocation of a declaration

11. (1) The Minister may refuse to grant or to renew or may revoke a declaration that a person is a refugee where—

(a) there are reasonable grounds for regarding him or her as a danger to the security of the State, or

(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of the State.

(2) Where—

(a) paragraph (a), (b), (c), (d), (e), (f) or (h) of section 21(1) of the 1996 Act applies, as respects a person to whom a declaration has been given,

(b) a person to whom a declaration has been given misrepresented or omitted facts (including through the use of false documents) and this was decisive for the granting of the declaration, or

(c) a person to whom a declaration has been given should have been or is excluded from being a refugee,

the Minister shall, without prejudice to section 21(2) of the 1996 Act, revoke or, as the case may be, refuse to renew the declaration.

Exclusion from refugee status

12. An applicant is excluded from being a refugee if he or she has instigated or otherwise participated in the commission of the acts or crimes mentioned in section 2(c) of the 1996 Act.

Exclusion from subsidiary protection

13. (1) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—

- (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) has committed a serious crime;
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or
- (d) constitutes a danger to the community or to the security of the State.

(2) Paragraph (1) applies also to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) A person may be excluded from being eligible for subsidiary protection if he or she has, prior to his or her admission to the State, committed one or more crimes, outside the scope of paragraph (1), which would be punishable by imprisonment had they been committed in the State, and left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

Revocation of or refusal to renew subsidiary protection

14. (1) The Minister shall revoke or refuse to renew a permission granted to a person under Regulation 4 where—

- (a) subject to paragraph (2), the circumstances which led to the granting of the permission have ceased to exist or have changed to such a degree that protection is no longer required;
- (b) the person should have been or is excluded from being a person eligible for subsidiary protection under Regulation 13(1) or (2); or
- (c) misrepresentation or omission of facts, whether or not including the use of false documents, by the person were decisive for the granting of subsidiary protection status.

(2) In determining whether paragraph (1)(a) applies, the Minister shall have regard to whether the change of circumstances referred to in that provision is of such a significant and non-temporary nature that the person granted subsidiary protection no longer faces a real risk of serious harm.

(3) The Minister may revoke or refuse to renew a permission granted under Regulation 4(4) where the person concerned should have been excluded from being eligible for subsidiary protection in accordance with Regulation 13(3).

(4) Section 3 of the 1999 Act shall apply in relation to a proposal to revoke or to refuse to renew a permission granted under Regulation 4(4).

General

15. In the application of Regulations 16 to 19 the specific situation of vulnerable persons such as minors (whether or not unaccompanied), disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, shall be taken into account.

Member of family of person eligible for subsidiary protection

16. (1) A person in respect of whom a determination under Regulation 4(4) has been made (in this Regulation referred to as the “applicant”) may apply to the Minister for permission to be granted to a member of his or her family to enter and to reside in the State.

(2) The Minister shall investigate, or cause to be investigated, an application under paragraph (1) to determine the relationship between the applicant and the person who is the subject of the application and that person’s domestic circumstances.

(3) (a) Subject to paragraph (5), if the Minister is satisfied that the person who is the subject of the application is a member of the family of the applicant, the Minister shall grant permission in writing to the person to enter and reside in the State.

(b) In subparagraph (a), “member of the family”, in relation to an applicant, means -

- (i) where the applicant is married, his or her spouse (provided that the marriage is subsisting on the date of the application under to paragraph (1)),
- (ii) where the applicant is, on the date of the application under paragraph (1), under the age of 18 years and is not married, his or her parents, or
- (iii) a child of the applicant who, on the date of the application under to paragraph (1), is under the age of 18 years and is not married.

(4) (a) Subject to paragraph (5), the Minister may grant permission to a dependent member of the family of an applicant to enter and reside in the State.

(b) In subparagraph (a), “dependent member of the family”, in relation to an applicant, means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the applicant who is wholly or mainly dependent on the applicant or is suffering from a mental or physical incapacity to such extent that it is not reasonable to expect him or her to maintain himself or herself fully.

(5) The Minister may refuse to grant permission to enter and reside in the State to a person referred to in paragraph (3) or (4) or revoke any permission granted to such a person—

(a) in the interest of national security or public policy (*ordre public*), or

(b) where the person would be or is excluded from refugee or subsidiary protection status in accordance with regulation 12 or 13.

Permission to remain in the State

17. (1) Subject to Regulations 11 and 14, a person who has been granted a declaration or to whom Regulation 4(4) or 16(3)(a) or 16(4)(a) applies shall be granted permission to remain in the State for three years.

(2) The permission referred to in paragraph (1) shall be renewable, unless compelling reasons of national security or public order (*ordre public*), otherwise require.

Travel documents

18. (1) Subject to paragraph (2), the Minister shall, on application in writing in that behalf and on payment of such fee (if any) as he or she may prescribe with the consent of the Minister for Finance, issue to a person to whom Regulation 4(4), 16(3)(a) or 16(4)(a) applies a travel document, in the form set out in Schedule 2 or a form to the like effect.

(2) The Minister may, for reasons of national security or public order (*ordre public*), refuse to issue a travel document.

(3) An applicant for a travel document shall furnish to the Minister such information (if any) as the Minister may reasonably require for the purpose of his or her functions under these Regulations.

Other rights

19. (1) The following provisions shall, subject to Regulation 14, apply to a person to whom Regulation 4(4), 16(3)(a) or 16(4)(a) applies—

- (a) the person shall be entitled to the same rights of travel in or to or from the State, other than to his or her country of origin, as those to which Irish citizens are entitled;
- (b) the person shall be entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen;
- (c) the person shall be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled.

(2) In paragraph (1)(c) “social welfare benefits” includes any payment or services provided for in or under the Social Welfare Acts, the Health Acts 1947 to 2004 and the Housing Acts 1966 to 2004.

SCHEDULE 1

APPLICATION FOR SUBSIDIARY PROTECTION UNDER THE EUROPEAN COMMUNITIES (ELIGIBILITY FOR PROTECTION) REGULATIONS, STATUTORY INSTRUMENT NO. [insert SI number] OF 2006.

1. Name:
2. Address in the State:
3. Refugee Application Reference Number: 69/
4. Nationality:
5. Date of Arrival in the State:
6. PPS Number:
7. Please indicate the basis on which “serious harm” as defined in the Regulations is being claimed (*tick one or more of the following, as appropriate*)
 - ? death penalty or execution
 - ? torture or inhuman or degrading treatment or punishment of an applicant in the country of origin
 - ? serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict
8. Set out fully all of the grounds relating specifically to your circumstances upon which you are relying in support your application for Subsidiary Protection in the State
9. You are required to submit all documentary evidence available to you which supports your application for Subsidiary Protection in the State. Are you enclosing any documentary evidence with your application for subsidiary protection?
Yes ? No ?
10. If you are relying on any documentary evidence already submitted with your asylum claim, please identify such evidence in the space below.

Important Note: documentary evidence already submitted by you or on your behalf to the Office of the Refugee Applications Commissioner (ORAC) or the Refugee Appeals Tribunal (RAT) as part of the application for asylum will be available to the Minister and does not require to be resubmitted by you.

11. If you cannot provide any documentary evidence to support your application for subsidiary protection, you are required to provide an explanation as to why no such evidence can be provided.

I hereby declare that the above information and any material attached is true, accurate and up-to-date and is the full extent of my submission to the Minister for Justice, Equality and Law Reform for subsidiary protection under the European Communities (Eligibility for Protection) Regulations 2006, Statutory Instrument No. *[insert SI number]*.

Signature of applicant

Date of application

SCHEDULE 2

TRAVEL DOCUMENT FOR PERSONS DETERMINED TO BE ELIGIBLE FOR SUBSIDIARY PROTECTION or FAMILY MEMBERS OF SUCH PERSONS

Page 1

No. (INIS ref)

TRAVEL DOCUMENT

Person determined to be eligible for subsidiary protection under the European Communities (Eligibility for Protection) Regulations, Statutory Instrument No. *(insert number of Statutory Instrument)* of 2006 to give effect to Council Directive 2004/83/EC

OR

Family member of person determined to be eligible for subsidiary protection under the European Communities (Eligibility for Protection) Regulations, Statutory Instrument No. *(insert number of Statutory Instrument)* of 2006 to give effect to Council Directive 2004/83/EC *(Insert as appropriate)*

This document will expire on

The holder is authorised to return to Ireland on or before
.....unless some other date is specified

Travel Document No.

Page 2

HOLDER OF DOCUMENT

Surname:

Forename(s):

Date of Birth:

Place of Birth:

Occupation:

Place of Residence in Ireland:

Name of wife (husband):

Names of children:

Page 3

DESCRIPTION

Height..... Face..... Nose.....

Hair..... Eyes.....

Special peculiarities.....

Remarks/Observations.....

PHOTOGRAPH

Signature of Holder

Page 4

This document is valid for the following countries:

ALL COUNTRIES except.....

Person determined to be eligible for subsidiary protection under the European Communities (Eligibility for Protection) Regulations, Statutory Instrument No. (insert number of Statutory Instrument) of 2006 to give effect to Council Directive 2004/83/EC

OR

Family member of person determined to be eligible for subsidiary protection under the European Communities (Eligibility for Protection) Regulations, Statutory Instrument No. (insert number of Statutory Instrument) of 2006 to give effect to Council Directive 2004/83/EC (*Insert as appropriate*)

Issued at:

Date of Issue:

Signature and stamp of Authority issuing the document

Fee Paid

Pages 5 - 8

Extension or renewal of validity

Fee Paid From
To

Done at Date

Signature and stamp of Authority extending or renewing the validity of the document

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Extension or renewal of validity

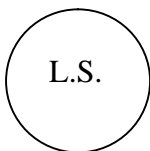
Fee Paid From
To

Done at Date

Signature and stamp of Authority extending or renewing the validity of the document

.....

GIVEN under my Official Seal,
9 October 2006



MICHAEL McDOWELL
Minister for Justice, Equality
and Law Reform.

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation).

This Order was made for the purpose of giving effect in Irish law to the Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Directive 2004/83/EC: “the Qualification Directive”).